

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**Glass Dimensions, Inc. on behalf of the
Glass Dimensions, Inc. Profit Sharing
Plan and Trust, *and all others*
*similarly situated,***

Plaintiffs,

v.

**State Street Corporation, State Street
Bank & Trust Co.,
and State Street Global Advisors,**

Defendants.

CIVIL ACTION NO: 1:10-CV-10588 (JLT)

ORAL ARGUMENT REQUESTED

PLAINTIFF'S MOTION FOR CLASS CERTICATION

Plaintiff, Glass Dimensions, Inc., on behalf of the Glass Dimensions, Inc. Profit Sharing Plan and Trust (the "Glass Dimensions Plan" or "Plan") and all others similarly situated, sues under the Employee Retirement Income Security Act, 29 U.S.C. § 1001. *et seq.* ("ERISA") to recover millions of dollars in unreasonable securities lending fees charged by State Street Bank and Trust Company ("SSBT"), State Street Global Advisors ("SSgA") and State Street Corporation ("SSC") in violation of their fiduciary duties and prohibitions on self-dealing. The Plan and the members of the class all invested in collective investment trusts that loaned securities, the "Lending Funds."¹

Plaintiff moves to have the following class certified under Rule 23 of the Federal Rules of Civil Procedure:

ERISA plans that, during the period of April 9, 2004 to the present: (1) invested in a Collective Trust established by Defendants that loaned securities under a master Securities Lending Authorization Agreement, and (2) paid to Defendants fifty

¹ The "Lending Funds" are those collective investment funds managed by SSgA that lend securities under Defendants' securities lending program.

percent (50%) of the net securities lending income that the Collective Trust earned from a Lending Fund.²

The supporting memorandum of law, declarations, and exhibits, show that each requirement of Fed. R. Civ. P. 23(a) is satisfied, the class can be maintained under Fed. R. Civ. P. 23(b)(3), and proposed class counsel should be appointed to represent the class pursuant Fed. R. Civ. P. 23(g).

Numerosity. During the Class Period, April 9, 2004 to the present, Defendants maintained at least 260 Lending Funds. Hundreds of ERISA plans invested in these 260 Lending Funds and paid Defendants 50% of the securities lending income they earned.

Commonality. Common fact and legal issues abound: Defendants' fiduciary status; common documents, including a Master Trust and Lending Agreement, governing all Lending Funds; the reasonableness of SSBT's securities lending income; Defendants' treatment of the Lending Funds as a single client; SSgA's due diligence in selecting SSBT as Lending Agent; Defendants' institutional conflicts; and a regulatory safe-harbor with uniform requirements for securities lending by collective investment trusts like the Lending Funds.

Typicality. The claims asserted by the Glass Dimensions Plan are typical of the claims of all of the plans in the proposed class and are based upon the same legal and remedial theories.. Like all of the other plans, the Glass Dimensions Plan paid 50% of securities lending income and participated in SSBT's securities lending program pursuant to the Lending Agreement. The Plan has no conflicts with other potential class members because it has the same interest in proving that SSBT's compensation was unreasonable. Indeed, all proposed class members share a common interest in proving the lowest possible amount of reasonable compensation because the lower the bar, the larger the recovery for each potential class member.

² Plaintiff proposes a slightly different class definition here than the one proposed in the First Amended Complaint ("Complaint" or "FAC") based on discovery. Dkt. No. 14, ¶ 41.

Adequacy. Plaintiff, an entity, has demonstrated (via the testimony of its officers) that it understands the issues in the case, has taken an active role in the case, has no conflicts with other members of the proposed class, and has chosen and retained experienced class counsel.

Predominance and Superiority. The many and significant common legal and fact issues described above predominate over any potential and remote individual issues. Even Defendants' primary affirmative defense, a regulatory exemption, depends on common proof. To be sure, damages may vary, but Defendants' have all the electronic data to compute damages when the bar for unreasonable compensation is set. A class action is a superior mechanism for adjudicating the claims of hundreds of class members, because they all challenge the same conduct under the same documents under the same federal law, and the individual economic injuries of many class members, like the Glass Dimensions Plan here, are too small to vindicate in separate lawsuits.

Class Counsel. Class counsel have the experience and resources to vigorously represent the class and has diligently investigated and prosecuted this action.

In sum, the proposed class satisfies Rule 23(a), 23(b)(3), and 23(g). It consists of hundreds of ERISA plans who were charged the same fee pursuant to the same controlling documents. There are no potential conflicts between Plaintiff and the class or among members of the proposed class as they share the same interest in proving that 50% of securities lending income is an unreasonable fee. They sue under a uniform federal law and individual issues are not present. Class counsel is skilled, diligent, and has the resources to try this case to the end. Accordingly, the proposed class should be certified.

Dated: January 27, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2012, I caused a copy of **“Plaintiff’s Motion for Class Certification”** to be served via e-mail on counsel as listed below:

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